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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

REBECCA REYES,

Plaintiff and Respondent,

v.

ABELARDO CORTEZ GALANG,

Defendant and Appellant.

B203170

(Los Angeles County
Super. Ct. No. TS010654)

APPEAL from an order of the Superior Court of Los Angeles County,
Henry Josefsberg, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)
Affirmed.

Seymour I. Amster for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Appellant Abelardo Cortez Galang (Galang) appeals from a restraining order issued to Rebecca Reyes (Reyes). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 21, 2007, Reyes filed a request for orders to stop harassment with the superior court for a restraining order against Galang pursuant to Code of Civil Procedure sections 527.6 and 527.9. Reyes utilized the Judicial Council mandated form, revised on January 1, 2006. Reyes alleged she had been hurt (physically or emotionally) by Galang, who was a lodger in her home. On a request for orders to stop harassment (civil harassment) (Judicial Council forms, form CH-100), Reyes requested temporary orders because her “life is in danger.” The form stated that Reyes was required to provide Galang with personal service at least five days before the hearing, unless the court ordered a different time for service. On August 21, 2007, the superior court issued a temporary restraining order prohibiting Galang from harassing, attacking, striking, threatening, assaulting, hitting, following, stalking, destroying personal property, keeping under surveillance, or blocking Reyes. The court also ordered Galang to stay at least one yard away from Reyes and her vehicle. Galang was not evicted nor locked out of Reyes’s home. Utilizing a notice of hearing and temporary restraining order (CLETS) (Judicial Council forms, form CH-120), the trial court set a hearing for September 5, 2007, and directed Reyes to deliver a copy of the temporary restraining order to the sheriff and to have Galang served with notice of the upcoming hearing.

Galang was personally served on September 3, 2007, with all appropriate forms and notices of the upcoming hearing.

The matter came for hearing on September 5, 2007. There was no appearance by Galang and there was no outstanding warrant in the case. The clerk of the court confirmed that Galang was *not* in custody. Rather, there had been an

open charge that the district attorney rejected. Further, Galang had been in court that day on a traffic case. The court proceeded with the hearing without Galang.

At the September 5, 2007, hearing, Reyes testified to the following: Galang was a tenant in her home. While Galang was supposed to pay rent, he did not. Galang had been living in the home for “[s]omewhere over two or three years” Reyes called the police on September 3, 2007, because Galang, who had a loaded gun, had parked behind Reyes’s car. Galang was arrested, possibly on a weapons charge.¹ Galang had been threatening Reyes for more than a year. He waived a loaded gun at Reyes as he opened and closed the bullet chamber, showing Reyes that the gun was loaded. He stated, “[t]his gun is ready to attack.” By the time of the hearing, Reyes was “living in fear, day in and day out.” She felt that her “safety was taken.” She could not “take it anymore.” Galang was abusive and acted violently. For example, one time Reyes asked Galang to clean his oil spill in the garage. In response, Galang threatened Reyes by stating “stay away and leave me alone, and you gonna be sorry.” In March 2006, when Reyes had company at her home, Galang also threatened Reyes by stating he was going to ruin her life. Galang grabbed Reyes’s arm and Reyes was scared that Galang would assault her again. In a July written note, Reyes asked Galang to clean up an oil spill. In response, Galang wrote Reyes a note stating, “Woman, I have tried to be patient and my time is running out. I know the stupid thing you are doing, so stay out of my life will you please. If you don’t you will be sorry.” Thereafter, in July of 2006, Galang’s threats became more severe. He told Reyes he was going to destroy her life and he would not move out of her home.

¹ As noted above, the clerk confirmed that Galang was not in custody when Reyes’s case was called for hearing.

Penal Code section 273.6 criminalizes a violation of an order issued pursuant to Code of Civil Procedure sections 527.6 and 527.8 as well as protective orders issued pursuant to Section 6218 of the Family Code and Welfare and Institutions Code section 15657.03 [elder abuse]. Penal Code section 12021 places gun possession restrictions on those convicted of Penal Code section 273.6.

The trial court found that a restraining order was warranted based on the living arrangement between Reyes and Galang, the prior injury to her, Reyes's courtroom demeanor and the incidents Reyes described, including the threat with a weapon. The court found there was a credible threat of violence.

On September 5, 2007, the trial court issued a three-year restraining order precluding Galang from harassing, attacking, striking, threatening, assaulting, hitting, following, stalking, destroying personal property, keeping under surveillance, or blocking Reyes. It also prohibited Galang from contacting (directly or indirectly), telephoning, sending messages, and mailing or e-mailing Reyes. Galang was also ordered to stay 50 yards away from Reyes, Reyes's home, job, and vehicle. However, Galang was permitted to go to his place of work, even if it was within 50 yards of Reyes. Reyes was directed to deliver a copy of the order to the sheriff in the area where she lived. The last section of the September 5, 2007, order was entitled "instructions to law enforcement." It stated: "This Order is effective when made. It is enforceable anywhere in all 50 states, the District of Columbia, all tribal lands, and all U.S. Territories and shall be enforced as if it were an Order of that jurisdiction by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency shall advise the restrained person of the terms of the Order and then shall enforce it. Violations of this restraining order are subject to criminal penalties."

DISCUSSION

1. *There was evidence to support the issuance of the order.*

Galang first contends that there was no evidence to support the issuance of the harassment restraining order. This contention is unpersuasive.

Reyes testified to a long period of time during which she was (1) physically assaulted (when Galang grabbed her arm); (2) threatened in writing (when Galang stated “my time is running out. [S]tay out of my life If you don’t you will be sorry[;]”) and (3) verbally threatened (when Galang stated “stay away and leave me alone, and your gonna be sorry” and that he was going to ruin and destroy her life). Reyes also presented evidence that she was threatened by Galang when he waived a loaded gun at Reyes and stated it was “ready to attack.” Further, Reyes testified that she was fearful for her safety. This testimony supports the issuance of the restraining order as it demonstrated that Reyes was harassed and suffered substantial emotional distress as a result of Galang’s actions, as would a reasonable person. (Code Civ. Proc., § 527.6, subs. (a), (b).)²

² Code of Civil Procedure section 527.6, reads in part:

“(a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

“(b) For the purposes of this section, ‘harassment’ is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

“ . . .

“(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527

“(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. . . .

“(e) This section does not preclude either party from representation by private counsel or from appearing on the party’s own behalf.

“ . . .

“(g) Upon the filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

“(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court’s discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

“An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

“Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

“If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

“ . . .

“(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

“ . . .

“(l) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10

2. *Galang was provided with sufficient time to respond.*

Galang contends he was denied due process because he was not provided sufficient time to respond. This contention is not persuasive.

The order in this matter was issued pursuant to Code of Civil Procedure section 527.6. (See fn. 2.) Paragraph 15 of Judicial Council forms, form CH-100, the request for orders to stop harassment standardized form, and paragraph 13 of Judicial Council forms, form CH-120, the notice of hearing and temporary restraining order, both stated that the time for service was “at least 5 days before the hearing.” This language is consistent with Code of Civil Procedure section 527.6, subdivision (g) which states that defendants shall be personally served at least five days before a hearing on a petition for a temporary restraining order or injunction.

Galang contends he was denied due process because the hearing was held on September 5, 2007, only two days after he was served on September 3, 2007. However, subdivision (g) of section 527.6 of Code of Civil Procedure, permits a

(commencing with Section 6200) of the Family Code. This section does not preclude a plaintiff from using other existing civil remedies.

“(m) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

“(n) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

“(o) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

“ . . . ”

shortening of the time for service on the defendant “for good cause, on motion of the plaintiff or on its own motion” Here, the court confirmed that Galang had been served and impliedly on its own motion, shortened the time for service. Further, Galang does not suggest he was unaware of the hearing. He does not state he was foreclosed from appearing due to other circumstances. Rather, on September 5, 2007, Galang appeared in court on a traffic matter, yet apparently chose not to appear personally or through counsel for the hearing in this case. Further, Galang has not presented an argument to demonstrate how this shortened time frame prejudiced him. He does not suggest he was deprived of an opportunity to prepare or present a defense, either in writing or orally. He does not state he requested a continuance to prepare for his case, or that additional time would have benefited him. (Compare with *Ross v. Figueroa* (2006) 139 Cal.App.4th 856.) Thus, the fact that Galang received two days, and not five days notice, did not deny him due process. Galang was not denied an opportunity to be heard.

3. *Galang was not denied due process because the matter was referred to law enforcement through CLETS.*

Galang contends he was denied due process because after the restraining order was issued it was referred to the California Law Enforcement Telecommunications System (CLETS). Among other arguments, Galang suggests he was unaware of the ramifications of the issuance of the order that included information being posted on CLETS. We are not persuaded by Galang’s arguments.

A temporary restraining order or injunction issued pursuant to Code of Civil Procedure section 527.6 must be issued on forms adopted by the Judicial Council and approved by the Department of Justice under Family Code section 6380, subdivision (i), although orders not issued on those forms are not therefore unenforceable. (Code Civ. Proc., § 527.6, subd. (n).) (See Judicial Council forms, form CH-140, Restraining Order After Hearing to Stop Harassment (CLETS))

(Civil Harassment).) Code of Civil Procedure section 527.6, subdivision (h) mandates courts issuing temporary restraining orders or injunctions to direct plaintiffs or their attorneys to deliver a copy of such orders to law enforcement agencies, within the court's discretion as requested by the plaintiffs, and each law enforcement agency is to make such information available to law enforcement agencies responding to the scene of reported harassment. Code of Civil Procedure section 527.6, subdivision (o) states that "[i]nformation on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code."

Prior to the issuance of the order, Galang was served with a request for orders to stop harassment, on Judicial Council forms, form CH-100, as well as a notice of hearing and temporary restraining order (CLETS) (civil harassment), on Judicial Council forms, form CH-120. Page 3, paragraph 13, of Judicial Council forms, form CH-100 informed Galang that Reyes was delivering the document to the sheriff's department. Page 3, paragraph 11, of Judicial Council forms, form CH-120 informed Galang that if the court issued a temporary restraining order, Reyes or her lawyer was to deliver a copy thereof to the sheriff's department, as it was the local law enforcement agency. The trial court utilized Judicial Council forms, form CH-140, Restraining Order After Hearing to Stop Harassment (CLETS) (civil harassment) to issue the September 5, 2007, restraining order. Paragraph 12 on Judicial Council forms, form CH-140 informed Galang that the order was being delivered to the Los Angeles County Sheriff. The last section of Judicial Council forms, form CH-140, instructions for law enforcement, specifically informed Galang that the order was enforceable throughout the United States and that its existence could be verified through CLETS, and that violations of the order are subject to criminal penalties. Thus, Galang was given notice prior to the issuance of the restraining order and after it was issued, that any restraining order issued by the court as requested by Reyes would be delivered to law

enforcement personnel and become part of California's electronic reporting system, through CLETS. Lastly, Galang is held to know that Code of Civil Procedure section 527.6, subdivisions (h) and (o) have reporting provisions such that law enforcement agencies are notified of temporary restraining orders and injunctions.

Galang suggests that although a civil restraining order was issued against him, he has been criminalized for life because information about the request for, and the issuance of, the restraining order will forever remain on his record. Galang states there is no specific vehicle to have an entry stricken from CLETS. However, Code of Civil Procedure section 533 grants courts the right to issue an order modifying or dissolving an injunction or temporary restraining order and Galang has not shown he is forever foreclosed from asking a court to issue such an order that would include a request to have all entries on CLETS relating to the instant matter removed.³

4. *Galang's statutory arguments are not properly before us and are not persuasive.*

Galang makes many suggestions as to how he believes the statutory scheme can be improved. For example, he suggests Penal Code section 273.6 should not address violations of Code of Civil Procedure section 527.6, but rather there should be a separate Penal Code section addressing such violations. He also suggests the codes should be amended to separate cases arising from the Family Code and domestic violence from civil injunctions. Galang also has provided suggestions as to how he believes the forms can be improved. He notes that on July 1, 2007, the Judicial Council created form DV-260/CH-102/EA-102 which is utilized to provide confidential information to CLETS does not include a section for a file stamp nor an authorization for execution by a judicial officer, and Galang

³ Galang asks that we issue an order directing that the restraining orders be stricken from the CLETS reporting system. Galang never addressed this question to the trial court.

suggests the form should be revised to accommodate such information. These suggestions must be addressed by the Legislature or the Judicial Council.

Galang further contends Code of Civil Procedure section 527.6 is unconstitutionally vague because in subdivision (l) it states “This section does *not* apply to any action or proceeding covered by . . . by Division 10 (commencing with Section 6200) of the Family Code[, addressing domestic violence],” (italics added), yet subdivision (o) of section 527.6 directs procedures in the Family Code be used to transmit information to CLETS. However, there is no ambiguity. Subdivision (o) of Code of Civil Procedure section 527.6 directs that the same reporting system and requirements as used in the Family Code are to apply to the civil harassment orders issued. Subdivision (l) of section 527.6 notifies everyone that if someone wants an order as a result of domestic violence incidents, then there is a statutory scheme specifically designed to handle such requests in the Family Code. Further, Galang has failed to explain how the references to domestic violence orders obtainable pursuant to the Family Code are relevant to his case, and thus, there can be no ambiguity as applied to him.

DISPOSITION

The order is affirmed. Appellant Abelardo Cortez Galang is to pay all costs on appeal.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.